

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

JAMES McCONICO, JR.,)	
)	
Petitioner,)	
)	
v.)	CIVIL ACTION NO.
)	2:19cv111-MHT
)	(WO)
ALABAMA BOARD OF PARDONS &)	
PAROLE, et al.,)	
)	
Respondents.)	

ORDER

This cause is now before the court on the petitioner's notice of appeal (doc. no. 47), which the court is treating as a motion to proceed on appeal in forma pauperis.*

28 U.S.C. § 1915(a)(3) provides that "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In making this determination as to good faith,

* Petitioner filed this notice of appeal in relation to the court's June 7, 2019, judgment. Apparently, he filed the notice of appeal before learning that the court had vacated that judgment. See Order (doc. no. 45). Because an appeal from a vacated judgment is moot, petitioner may wish to withdraw this notice of appeal.

a court must use an objective standard, such as whether the appeal is "frivolous," *Coppedge v. United States*, 369 U.S. 438, 445 (1962), or "has no substantive merit." *United States v. Bottoson*, 644 F.2d 1174, 1176 (5th Cir. Unit B May 15, 1981) (per curiam); see also *Rudolph v. Allen*, 666 F.2d 519, 520 (11th Cir. 1982) (per curiam); *Morris v. Ross*, 663 F.2d 1032 (11th Cir. 1981). Applying this standard, this court is of the opinion that the petitioner's appeal is without a legal or factual basis and, accordingly, is frivolous and not taken in good faith. See, e.g., *Rudolph v. Allen*, *supra*; *Brown v. Pena*, 441 F. Supp. 1382 (S.D. Fla. 1977), *aff'd without opinion*, 589 F.2d 1113 (5th Cir. 1979).

Accordingly, it is ORDERED that the petitioner's motion to proceed on appeal in forma pauperis is denied; and that the appeal in this cause is certified, pursuant to 28 U.S.C. § 1915(a)(3), as not taken in

good faith.

DONE, this the 15th day of July, 2019.

/s/ Myron H. Thompson
UNITED STATES DISTRICT JUDGE